

# HOUSE BILL REPORT

## HB 1023

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**As Reported by House Committee On:**  
Public Safety & Emergency Preparedness

**Title:** An act relating to the DNA identification system.

**Brief Description:** Providing for broader collection of biological samples for the DNA identification system.

**Sponsors:** Representatives Miloscia, Strow, O'Brien and Moeller.

**Brief History:**

**Committee Activity:**

Public Safety & Emergency Preparedness: 1/18/07, 1/25/07 [DPS].

### Brief Summary of Substitute Bill

- Expands the deoxyribonucleic acid (DNA) identification system to include information from persons convicted of certain gross misdemeanors and misdemeanors.
- Changes the manner in which biological samples are collected and tested.
- Changes the manner in which fees connected with the DNA database are levied and disbursed.
- Removes the requirement that the Washington State Patrol consult with the University of Washington School of Medicine when providing certain DNA-related services.

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### HOUSE COMMITTEE ON PUBLIC SAFETY & EMERGENCY PREPAREDNESS

**Majority Report:** The substitute bill be substituted therefor and the substitute bill do pass. Signed by 6 members: Representatives O'Brien, Chair; Hurst, Vice Chair; Pearson, Ranking Minority Member; Ross, Assistant Ranking Minority Member; Ahern, and Lovick.

**Staff:** Jim Morishima (786-7191).

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*This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.*

## **Background:**

The Washington State Patrol (WSP) operates and maintains a deoxyribonucleic acid (DNA) identification system. The purpose of the system is to help with criminal investigations and to identify human remains or missing persons. County and city jails are responsible for collecting biological samples for DNA analysis from offenders incarcerated in their facilities. The Department of Corrections and the Department of Social and Health Services are responsible for collecting biological samples for DNA analysis from offenders incarcerated in their facilities. Local police and sheriff's departments are responsible for collecting biological samples for DNA analysis from offenders who do not serve any term of incarceration.

### I. Offenders from Whom a Biological Sample Must be Collected

Biological samples must be collected from persons convicted of any felony and the following gross misdemeanors: Stalking, Harassment, and Communicating with a Minor for Immoral Purposes.

### II. Testing Biological Samples

The Director of the Forensic Laboratory Services Bureau of the WSP (Director) is required to test the biological samples for inclusion in the DNA database. The Director must give priority to testing samples from persons convicted of sex and violent offenses.

### III. Funding

A sentencing court must charge every offender convicted of any felony committed on or after July 1, 2002, a fee of \$100 for collection of a DNA sample unless it would result in an undue hardship on the offender. The fee must be deposited in the DNA Database Account, expenditures from which may only be used for the creation, operation, and maintenance of the DNA database.

### IV. Other DNA-Related Services Provided by the WSP

The WSP, in consultation with the University of Washington School of Medicine, may provide DNA analysis services to law enforcement agencies, provide assistance to law enforcement officials and prosecutors in the preparation and utilization of DNA evidence for presentation in court, and provide expert testimony in court on DNA evidentiary issues.

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## **Summary of Substitute Bill:**

### I. Offenders from Whom a Biological Sample Must be Collected

The following misdemeanors and gross misdemeanors are added to the list of crimes for which a biological sample must be collected upon conviction:

- Animal Cruelty in the second degree;
- Assault in the fourth degree;
- Custodial Sexual Misconduct;

- Failure to Register as a Sex Offender;
- Indecent Exposure;
- Malicious Mischief in the third degree;
- Patronizing a Prostitute;
- Possession of Stolen Property in the third degree;
- Prostitution;
- Sexual Misconduct with a Minor in the second degree;
- Theft in the third degree;
- Unlawful Harboring of a Minor; and
- Criminal violations of certain protection orders.

If a DNA sample already exists from the offender in question, another biological sample does not have to be collected.

## II. Testing Biological Samples

The Forensic Laboratory Services Bureau of the WSP itself, rather than its Director, is responsible for testing biological samples for inclusion in the DNA database. Duplicate biological samples may be excluded from testing unless the testing is deemed necessary or advisable by the Director. The requirement that priority be given to sex and violent offenses is eliminated.

## III. Funding

A court must levy the \$100 fee upon a conviction for any crime included in the database regardless of when it was committed. The fee must be imposed regardless of whether it would be a hardship to the offender. Eighty percent of the fee must be transmitted to the DNA database account while 20 percent must be transmitted to the agency responsible for collecting the biological sample.

## IV. Other DNA-Related Services Provided by the WSP

The requirement that the WSP consult with the University of Washington School of Medicine when providing various DNA-related services is eliminated.

### **Substitute Bill Compared to Original Bill:**

Biological samples from persons convicted of criminal violations of sexual assault protection orders are added to the DNA database.

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**Appropriation:** None.

**Fiscal Note:** Available.

**Effective Date of Substitute Bill:** The bill takes effect 90 days after adjournment of session in which bill is passed.

### **Staff Summary of Public Testimony:**

(In support) This bill will make the justice system more efficient and effective in a fair and balanced way. Expansion of the DNA database will lower crime rates, increase the chances of catching the correct perpetrator, exonerate innocent persons, and increase successful convictions. It will make law enforcement more efficient by allowing officers to easily exclude innocent persons from their investigations. This has been a successful program in the past. The crimes that were added in this bill correlate to persons who commit subsequent sex offenses and other serious offenses. Allowing duplicate samples not to be collected will ease the burden on local governments. Taking away the hardship exemption from the fee will help make the DNA database program self-sufficient.

(Opposed) This bill will have an adverse impact on the privacy of persons in the DNA database. This bill adds property offenses to the database for both adult and juvenile offenders; the vast majority of violent offenders do not have a prior conviction of one of these property offenses. If this bill were to pass, a juvenile who shoplifts may have a DNA sample in the database forever. There are no provisions in this bill for removing persons from the database whose convictions were vacated. Taking away the court's ability to waive the fee in cases of financial hardship adds more costs to criminal defendants who already have trouble paying off their legal financial obligations and reduces the ability of the court to address the individual circumstances of the defendant.

**Persons Testifying:** (In support) Representative Miloscia, prime sponsor; Dr. Barry Logan, Washington State Patrol Crime Labs; Tom McBride, Washington Association of Prosecuting Attorneys; and James McMahan, Washington Association of Sheriffs and Police Chiefs.

(Opposed) Jennifer Shaw, American Civil Liberties Union of Washington.

**Persons Signed In To Testify But Not Testifying:** None.